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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,531	07/18/2003	David D. Rich	5691-2	2810
7590	01/14/2005			EXAMINER
Woodard, Emhardt, Moriarty, McNett & Henry LLP Bank One Center/Tower Suite 3700 111 Monument Circle Indianapolis, IN 46204-5137			LAZOR, MICHELLE A	
			ART UNIT	PAPER NUMBER
			1734	
			DATE MAILED: 01/14/2005	

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/622,531	RICH, DAVID D.	
	Examiner Michelle A Lazor	Art Unit 1734	

-- The MAILING DATE of this communication app ars on the cov r sheet with the correspondenc address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on ____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 14 and 15 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-9 and 11-13 is/are rejected.
- 7) Claim(s) 10 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 18 July 2003 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>7/18/03</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-13, drawn to spraying apparatus, classified in class 118, subclass 305.
 - II. Claims 14-17, drawn to a method for spraying a coating a roof, classified in class 421, subclass 427.1.

The inventions are distinct, each from the other because of the following reasons:

- 2. Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus as claimed can be used to practices another materially different process such as spray coating the ground or road.
- 3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
- 4. During a telephone conversation with John Moriarty on 12/16/2004 a provisional election was made without traverse to prosecute the invention of an apparatus for spraying a coating material, claims 1-13. Affirmation of this election must be made by applicant in replying to this Office action. Claims 14-17 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

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5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Coffee et al. (U.S. Patent No. 4553702).

Coffee et al. disclose an apparatus comprising a main frame (200) having a longitudinal axis; a plurality of front and back wheels rotatably mounted to said frame; an arm (205) mounted to said frame and extending outwardly of said frame; a reservoir (209 or 210); a plurality of outlets (213) connected to said reservoir; and control means (204) connected to said reservoir (Figure 1; column 4, lines 21 – 36). Thus Coffee et al. disclose all the limitations of Claim 1, and anticipate the claimed invention.

7. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by McQuinn (U.S. Patent No. 6230091).

McQuinn discloses an apparatus comprising a main frame having a longitudinal axis; a plurality of front and back wheels rotatably mounted to said frame (Figure 11); an arm (600) mounted to said frame and extending outwardly of said frame (Figure 6); a reservoir (Compartment A or B) with a chamber (614) connected to said reservoir (Figure 11; column 14, lines 4 – 17); a plurality of outlets (1110) connected to said reservoir; a plurality of conduits connecting separately each of said outlets to said chamber (Figure 6) and control means (200) connected to said reservoir (column 16, lines 11 – 19). Thus McQuinn discloses all the limitations of Claims 1 and 2, and anticipates the claimed invention.

8. Claims 1 – 3 are rejected under 35 U.S.C. 102(b) as being anticipated by Schuitemaker (U.S. Patent No. 4828177).

Schuitemaker discloses an apparatus comprising a main frame (12) having a longitudinal axis; a plurality of front and back wheels (186) rotatably mounted to said frame; an arm or bar (80) mounted to said frame and extending outwardly of said frame; a reservoir (37,39) (column 3, lines 9 – 16) with a chamber or manifold (100) connected to said reservoir (37, 39); a plurality of outlets (90, 92) connected to said reservoir; a plurality of conduits (104, 106) connecting separately each of said outlets to said chamber (column 3, lines 49 – 54); and control means (142) connected to said reservoir (column 3, line 55 – column 4, line 5); wherein said arm includes a plurality of adjustable outlets (column 3, lines 33 – 48 and column 5, lines 5 – 15). Thus Schuitemaker discloses all the limitations of Claims 1 – 3, and anticipates the claimed invention.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schuitemaker as applied to claim 3 above, and further in view of Armstrong (U.S. Patent No. 4893751).

Schuitemaker discloses all the limitations of Claim 3 including a handle connected to said main frame (Figure 1), but does not disclose a spray gun receptacle mounted to said main frame

and a hand-holdable spray gun connected to said chamber and normally positioned in said receptacle. However, Armstrong discloses a hand-holdable spray gun connected to said chamber (Figure 8, column 7, lines 3 – 19). Although Armstrong does not specifically disclose using a spray gun receptacle, one in the art would know to use a receptacle in order to suspend the spray gun on the handle (column 7, lines 5 – 6). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to use a spray gun receptacle mounted to said main frame and a hand-holdable spray gun in order to spray a specific area which may not be reachable using said spray arm.

11. Claims 6 – 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schuitemaker and Armstrong as applied to claim 5 above, and further in view of Sauer (U.S. Patent No. 4962892).

Regarding Claim 6, Schuitemaker and Armstrong disclose all the limitations of Claim 5, but do not disclose handle-mounting means on said main frame that are connected to said handle. However, Sauer discloses handle-mounting means or a bolt (124) connected to said handle (column 6, lines 38 – 54). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to use handle-mounting means connected to said handle to provide the operator with maximum comfort and ease of operation while pushing the apparatus (column 3, lines 7 – 12).

Regarding Claims 7 and 8, Schuitemaker discloses said main frame to include wheel mounting means connected to said plurality of wheels and mounting means connected to said arm (Figures 9 – 11; column 5, lines 5 – 15).

Regarding Claim 9, Schuitemaker discloses using a hose connecting said reservoir to said chamber, but does not specifically disclose remotely locating said reservoir. However, Schuitemaker discloses locating spray containers (37, 39) in a basket (36) that is considered portable (Figure 1; column 5, lines 38 – 46). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to remotely locate the reservoir when large quantities of a toxic or flammable chemical are to be sprayed to increase safety, or when there are large quantities of a general chemical to be sprayed which would impede the operator from comfortably pushing the apparatus.

12. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schuitemaker, Armstrong, and Sauer as applied to claim 8 above, and further in view of Marlek (U.S. Patent No. 4638948).

Schuitemaker, Armstrong, and Sauer disclose all the limitations of Claim 8 including using a basket (Schuitemaker, 36) for the spray containers (37, 39), but do not specifically disclose remotely locating said reservoir. However, Marlek discloses remotely locating said reservoir (24) (Figure 1). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to remotely locate the reservoir when there are large quantities of a chemical to be sprayed which would impede the operator from comfortably pushing the apparatus, thereby allowing the apparatus to be lighter and more maneuverable.

13. Claim 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schuitemaker in view of Marlek.

Schuitemaker discloses a sprayer comprising a reservoir (37, 39) that is considered capable of being located at ground level (Figure 1; column 3, lines 9 – 16 and column 5, lines 38

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– 46); a wheeled platform (12) with a longitudinal axis; a handle connected to said platform (Figure 1); a boom or bar (80) mounted to said platform; a plurality of nozzles or outlets (90, 92); conduits (104, 106) connecting said nozzles to said reservoir (column 3, lines 49 – 54); and a pump or equivalent (38) connected to said reservoir (column 3, lines 9 – 22), but does not specifically disclose remotely locating said reservoir. However, Marlet discloses remotely locating said reservoir (24) (Figure 1). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to remotely locate the reservoir when there are large quantities of a chemical to be sprayed which would impede the operator from comfortably pushing the apparatus, thereby allowing the apparatus to be lighter and more maneuverable.

14. Claims 12 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schuitemaker and Marlek as applied to claim 11 above, and further in view of Sauer.

Schuitemaker and Marlek disclose all the limitations of Claim 11 including adjustment means for said nozzles or outlets (Schuitemaker: column 3, lines 33 – 48 and column 5, lines 5 – 15); adjustment means for spacing of said wheels (column 4, lines 40 – 49); a manifold (100) connected to said reservoir (37, 39); a plurality of conduits (104, 106) individually connecting said nozzles to said manifold (column 3, lines 49 – 54); and a hose connecting said reservoir to said manifold (Figures 1, 2, and 7), but do not specifically disclose positioning of said handle relative to said platform. However, Sauer discloses positioning means or a bolt (124) connected to said handle (column 6, lines 38 – 54). Therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to use positioning means connected to said handle to provide the operator with maximum comfort and ease of operation while pushing the apparatus (column 3, lines 7 – 12).

Allowable Subject Matter

15. Claim 10 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. There was no reference in the prior art search that taught, suggested, or disclosed said wheels to include two front wheels and two back wheels, wherein said arm is positioned between said front and back wheels; and wherein said handle means are operable to allow said handle to pivot away from said first position over said first end of said frame to a second position over said opposite second end of said frame. The majority of the mobile boom type spray apparatuses are three wheeled, as shown by Schuitemaker (Figure 1), Armstrong (Figure 1), and Sauer (Figure 1).

Conclusion

16. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Baird, Jr. et al. (U.S. Patent No. 3106344) and Kubacak (U.S. Patent No. 4252274) disclose various spray apparatus.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michelle A Lazor whose telephone number is 571-272-1232. The examiner can normally be reached on Thurs - Fri 5:45 - 4:15.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Fiorilla can be reached on 571-272-1187. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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CHRIS FIORILLA
SUPERVISORY PATENT EXAMINER
AU 1734